

**Response to citizen's petition regarding the aquatic vegetation control permit and request for preliminary adoption of proposed rule change; LSA Document #12-109; Administrative Cause No. 11-064D**

The NRC received a petition to change the rule regarding aquatic vegetation control permits. In particular, this petition requests a change in 312 IAC 9-10-3 in subsection (f) that reads as follows:

...(f) Except as otherwise provided in this subsection, five (5) days before the application of a substance permitted under this section, the permit holder must post clearly visible signs at the treatment area indicating the substance that will be applied and what precautions should be taken. For a treatment to be performed on a reservoir for drinking water supply that is owned by a municipality, the posting required under this subsection may be provided no later than thirty-six (36) hours before the permitted activity.

The petitioner states that weather conditions can change during the five days that the signs are posted, resulting in the actual application occurring some days after the date stated on the sign. This can confuse lake users and would require additional postings by the applicator, increasing the cost of the treatment.

Restrictions for the use of water treated with aquatic herbicide have become less stringent in recent years due to changing formulas and more years of data and testing. None of the commonly used aquatic herbicides have fishing or swimming restrictions any more. Several continue to have an irrigation restriction, but this has rarely has been a problem.

Therefore, the DNR recommends preliminary adoption of the following change to 312 IAC 9-10-3(f) as set forth in Exhibit A:

**EXHIBIT A”**

**TITLE 312 NATURAL RESOURCES COMISSION**

**Proposed Rule**  
LSA Document #12-109

**DIGEST**

Amends 312 IAC 9-10-3 governing aquatic vegetation control permits to eliminate the requirement of posting a sign at the treatment area five days in advance of the treatment. Effective thirty days after filing with the Publisher.

**312 IAC 9-10-3**

**SECTION 1. 312 IAC 9-10-3 IS AMENDED TO READ AS FOLLOWS:**

**312 IAC 9-10-3 Aquatic vegetation control permits**

Authority: IC 14-22-2-6; IC 14-22-9-10

Affected: IC 14-22-9-10

Sec. 3. (a) Except as provided under IC 14-22-9-10(a), a person must obtain a permit under this section before seeking to control aquatic vegetation through:

- (1) chemical;
- (2) mechanical;
- (3) physical; or
- (4) biological;

means in waters of the state.

(b) As provided under IC 14-22-9-10(a), this section does not apply to a landowner or tenant of real property adjacent to public waters or boundary waters of the state when controlling aquatic vegetation in the immediate vicinity of a boat landing or bathing beach located on or adjacent to the real property of the landowner or tenant if the following conditions exist:

- (1) Aquatic vegetation is controlled in one (1) contiguous area that is:
  - (A) six hundred twenty-five (625) square feet or smaller;
  - (B) along the legally established, average, or normal shoreline for twenty-five (25) feet or less;
  - (C) the water depth is six (6) feet or less.
- (2) Aquatic vegetation control efforts are repeated only within the same area in the same calendar year.
- (3) If the vegetation-free area already exists within the immediate vicinity of a boat landing or bathing beach on the real property of the landowner or tenant, any aquatic vegetation control efforts require a permit.

(c) Before obtaining a permit under this section, a person must complete an application on a departmental form that includes the following information:

- (1) The common name of the target plants and relative abundance of other dominant plants in each area to be controlled.
- (2) The acreage to be controlled, with affected areas illustrated on a legible map.
- (3) The maximum depth of the water, the maximum perpendicular distance from shoreline, and the linear distance along the shoreline where plants are to be treated.
- (4) The name and amount of the chemical to be used in each treatment, if a chemical control is used.
- (5) The duration and timing of control efforts, if controls will be repeated under a single permit.
- (6) The location of any water supply intake that may be adversely affected by the aquatic vegetation control activities.
- (7) The species, stocking rate, and release location, if a biological control is used.
- (8) The type of equipment and location of disposal area, if a mechanical control is used.
- (9) The name and contact information for the person who will conduct the control effort.
- (10) Any other information reasonably required by the department to effectively review the application.

(d) An applicant for a permit under this section must demonstrate each of the following to the satisfaction of the department:

- (1) The proposed treatment is likely to provide effective relief.
- (2) The proposed treatment will not result in any of the following:
  - (A) A hazard to humans, animals, or other nontarget organisms.
  - (B) A significant adverse impact to:
    - (i) the treated waterway;
    - (ii) endangered or threatened species; or

(iii) beneficial organisms within the treatment area or in adjacent areas, either directly or through habitat destruction.

(C) An unreasonable restriction on an existing use of the waterway.

(3) The proposed treatment will not occur within one hundred fifty (150) feet perpendicular to the shoreline of a public freshwater lake, along an area classified as a significant wetland under 312 IAC 11-2-24, except where the applicant demonstrates the treatment can be conducted without reducing the ecological value of the area.

(4) The following apply if a chemical is to be used for aquatic vegetation control:

(A) The chemical is labeled and registered for this purpose by the United States Environmental Protection Agency.

(B) Prior written approval is received from the department of environmental management if the waterway to be treated is a public drinking water supply.

(e) A permit issued under this section is limited to:

(1) the terms of the application; and

(2) conditions imposed on the permit by the department.

(f) Except as otherwise provided in this subsection, ~~five (5) days~~ before the application of a substance permitted under this section, the permit holder must post clearly visible signs at the treatment area indicating the substance that will be applied and what precautions should be taken. For a treatment to be performed on a reservoir for drinking water supply that is owned by a municipality, the posting required under this subsection may be provided no later than thirty-six (36) hours before the permitted activity.

(g) A permit holder must submit a report on a departmental form not later than the seven (7) days following the control effort, providing the date, location, acreage, and method used in each area where controls were implemented. (*Natural Resources Commission; 312 IAC 9-10-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2728; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Nov 14, 2003, 5:30 p.m.: 27 IR 1165, eff Jan 1, 2004; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Jul 6, 2010, 1:55 p.m.: 20100804-IR-312090616FRA*)